IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11681 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ARIF MAHAMADBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11681 of 2004

MS BANNA DUTTA FOR MR AR SHAIKH for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 09/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the

petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Baroda City, on 19th of August, 2004, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The Police Commissioner, Baroda City, came to the conclusion that the petitioner was immoral traffic offender within the meaning of the PASA Act and in pursuance of the order passed by him, the petitioner is under detention as immoral traffic offender from 19th of August, 2004.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of material in reaching at the subjective satisfaction. Firstly, the detaining authority relied upon a criminal case registered against the petitioner under the Immoral Traffic (Prevention) Act, 1956 and two in-camera statements of witnesses as recorded by sponsoring authority on 15th of August, and 16th of August, 2004 and verified by the detaining Authority on 17th of August, 2004.

3. An offence came to be registered against the petitioner and other accused under Sections 3, 4, 5 and 7 of the Immoral Traffic (Prohibition) Act, 1956 on 6th of August, 2004, wherein it was alleged that the petitioner in abatement of other accused, after obtaining a house, was running a brothel, being an offence under the said Act. The detaining authority took into consideration thoroughly the investigation papers in the said crime registered against the petitioner. Secondly, the detaining authority also took into consideration two incamera statements of witnesses, whose identity is not disclosed claiming privilege by the detaining authority under Section 9(2) of the PASA Act. One of the witnesses referred to an incident occurred on 30th of July, 2004 wherein petitioner and one Akshay Ranjitsingh Aasar directed the witness to bring two girls in the rickshaw of the witness, but on refusal of the witness, he was beaten by the petitioner and Akshay Ranjitsingh. A crowd was gathered there, but on account of threat by petitioner and Akshay Ranjitsinh by taking out big knife, the crowd was dispersed. The second witness referred to an incident occurred on 4th of August, 2004, wherein witness was man handled by the petitioner and Aasar Ranjitbhai on the suspicion that the witness was providing information to the police about the illegal business of the petitioner in dealing with the immoral traffic amongst females. On refusal by the witness for providing any information to the Police, he was beaten by

the petitioner and Akshay Ranjitsinh Aasar. Though a crowd was gathered around, but the crowd was threatened by petitioner and his associate by big knife, so the crowd was dispersed.

4. The detaining authority came to the conclusion from the above material that the petitioner was headstrong and of ferocious temperament. For the earning, the petitioner was running brothel house at Samarpan Society, Tandalja Road, Baroda, and was engaged in obtaining customers. On account of his illegal business, the petitioner was picking up quarrels with innocent citizens and was beating them in public place. In view of the detaining authority, on account of illegal activities of the petitioner, terror and fear were spread among the public, affecting prejudicially to the maintenance of public order. The detaining authority came to the conclusion that this illegal activities of the petitioner were required to be prevented forthwith. The detaining authority after taking into consideration other remedies available against the petitioner in general law, came to the conclusion that there was no other alternative except to detain the petitioner under the PASA Act. The detaining authority therefore passed the order of detention of the petitioner under the PASA Act which is under challenge in this petition

5. Learned Advocate Ms.Banna Dutta for learned Advocate Mr. A.R. Shaikh for the petitioner and learned AGP Mr.H.M. Prachchhak for the respondents were heard at length.

6. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of on the sole issue as to whether the subjective satisfaction arrived at by the detaining authority is vitiated on account of non-application of mind by him to the relevant material placed before him. As revealed from the grounds of detention placed on record, it is clear that, in the crime registered against the petitioner, he was arrested on 6th of August, 2004, but order of detention against the petitioner came to be passed on 19th of August, 2004 by the detaining authority. So, when the order of detention came to be passed by the detaining authority against the petitioner, he was under judicial custody. In this respect, the detaining authority came to the conclusion that for the crime registered against the petitioner, he was likely to move an application for bail at any time before the competent court and was likely to be released on bail.

The detaining authority also came to the conclusion that on so releasing the petitioner on bail, the petitioner was likely to be engaged in illegal and anti-social activities.

7. The facts of the present case are squarely covered by a decision of the Apex Court in the matter of AMRITLAL vs. UNION GOVERNMENT, as reported in AIR 2000 SC 3675, wherein the Apex Court was pleased to observe that there must be cogent materials before the Officer passing the detention order that the detenu was likely to be released on bail. The inference must be drawn from the available materials on record and must not be the ipse dixit of the Officer passing the order of detention. Likelihood of detenu's moving application for bail, was not held to be cogent material and detention order based on such material was liable to be quashed.

8. In the present case, after going through the papers being the grounds of detention which were placed before the detaining authority, it clearly appears that no cogent material was placed before the detaining authority to infer that the petitioner was likely to be released on bail. Likewise, there was nothing on record in the shape of material before the detaining authority to draw the inference that on so moving the application for bail, the petitioner was likely to be released on bail. In the present case, even the petitioner had not preferred any bail application while the order of detention came to be served upon him. Learned Advocate for the petitioner makes a statement that the petitioner came to be released on bail only in the instant month. Therefore, the subjective satisfaction of the detaining authority in this respect is based, in fact, on no material at all. The subjective satisfaction, therefore, arrived at by the detaining authority in this respect is not valid, legal or in accordance with law. The order under challenge is required to be quashed and set aside on this ground alone.

9. In the result, the petition is allowed. The order passed by the Commissioner of Police, Vadodara City, on 19th of August, 2004, against the petitioner in exercise of powers under Section 3(2) of the PASA Act is hereby quashed and set aside. The petitioner-Arif Mahamadbhai Patel is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair